

Type of Petition/Rule Number	Purpose of Rule	Time Period to File a Complaint/ Petition	Pleading Cycle	Pleading and Service Requirements	Affidavit and Evidentiary Requirements	Burden of Proof	Special Requirements/Other Comments
	denied or if its certification was revoked.	revoked.	3) Replies to oppositions may be filed within 7 days of filing of opposition.	2) be served on cable op and any other interested parties pursuant to § 1.47. <u>See</u> "Special Requirements/ Other Comments" section of § 76.7(a)(1), <u>supra</u> , at 1. Oppositions and replies also must be served on opposing parties.	reasons for denial or revocation no longer pertain; 2) meet the requirements of 47 U.S.C. § 543(a)(3), <u>see</u> § 76.910 Section <u>supra</u> ; and 3) state that the cable system is not subject to Eff Comp.		
<b>§ 76.933 Petition for Review of Rates</b>	Allows an LFA to request the FCC to review cable op's rates.	Petitions must be filed within 30 days of receipt of a cost-of-service showing.	1) LFA must issue an order stating that it is seeking FCC's assistance within the 30-day showing. 2) LFA files a petition for special relief (§ 76.7) for FCC to examine cable op's cost-of-service showing submitted under § 76.937(c). 3) Cable op must submit a copy of its cost-of-service showing to the FCC within 15 days of the LFA's order noting its intent to seek FCC assistance. 4) Under § 76.7, comments &	1) LFA must state reasons for seeking FCC assistance. 2) Petition must state relief requested, fully & precisely all facts & considerations relied on to demonstrate the need for relief & that it is in the public interest. 3) Petition may be filed informally but must be accompanied by a certificate that it was served on affected entity. Service is effected pursuant to § 1.47. <u>See</u> "Special	1) Factual allegations must be supported by affidavit of person w/ actual knowledge. 2) Petition must list all steps taken by parties to resolve the dispute. 3) Comments & Oppositions must contain detailed and full showing, supported by affidavit, of any facts or considerations relied on. 4) Replies are subject to same requirements. 5) Cable op that does not attempt to demonstrate the reasonableness of its rates can be held in	Burden of proof is on the cable op -- must show that rates are reasonable.	Cable op that files a facially incomplete form can be ordered to file supplemental info.

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			<p>oppositions may be filed within 20 days after the date of <u>public notice</u>.</p> <p>5) Petitioner can file a reply within 10 days of filing of comments &amp; oppositions.</p> <p>6) FCC notifies parties of decision.</p> <p>7) Decision is reviewable under § 1.106(a)(1) or § 1.115(a).</p>	<p>Requirements/ Other Comments" column of § 76.7(a)(1), <u>supra</u>, at 1.</p> <p>4) Original and two copies and all subsequent pleadings must be filed w/ FCC.</p> <p>5) Comments &amp; oppositions must be served on petitioner and all persons listed in petitioner's certificate of service.</p> <p>6) Petitioner's reply must be served on all parties filing pleadings.</p>	default and ordered to grant relief.		
<b>§ 76.944 Review of LFA Decisions on Rates</b>	Allows any participant at an LFA proceeding to file an appeal petition with the FCC challenging the LFA's decision on rates for basic service tier & associated equipment.	Petition must be filed within 30 days of the LFA's decision. Timing period is regulated by § 1.4(b).	<p>1) Petitioner files.</p> <p>2) Oppositions must be filed within 15 days after the petition/appeal is <u>filed</u>.</p> <p>3) Petitioner may file a reply within 7 days of the last day oppositions were due.</p>	§ 76.944 does not impose specific pleading obligations. Part 1 rules require that petitions set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions on which request is based, and the interest of the person submitting	<p>1) The FCC's review of the LFA's decision is limited to whether the LFA followed the procedures set forth in § 76.922 &amp; § 76.923.</p> <p>2) Under § 76.922 &amp; § 76.923, the cable op has the burden of justifying its rates and making a showing that the rates are reasonable. <u>See</u> § 76.937.</p> <p>3) The cable op petitioner will need to</p>	Burden of proof is on the petitioner/ appellant.	This section must be analyzed in conjunction with § 76.922 & § 76.923. These sections impose a number of rate-justifying requirements on cable ops.

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				the request. Petitions must be served on the LFA pursuant to § 1.47. See "Special Requirements/ Other Comments" column of § 76.7(a)(1), <u>supra</u> , at 1. Any oppositions or replies that are filed must be served on the respective opposing parties.	make the same showing to the FCC. This may include a cost-of-service showing.		
§ 76.945 Review of Basic Service Tiers	Allows the FCC to review rates for <u>basic service tier and related equipment</u> when FCC is regulator. Within this proceeding is a petition procedure to challenge a cable op's rate schedule filing.	1) A petition challenging the filed rates within the standards of § 76.922 & § 76.923 must be submitted within 15 days of the <u>public notice</u> of the rate schedule filing. 2) Rates outside of the § 76.922 & § 76.923 standards can be challenged by filing a petition within 30 days of the <u>public notice</u> of filing.	1) FCC asserts rate regulation authority over basic and notifies cable op. 2) Cable op must file a rate schedule with the FCC and the LFA (if applicable) within 30 days of notification. 3) Petitions opposing scheduled rates within the standards of § 76.922 & § 76.923 must be submitted within 15 days of the <u>public notice</u> of the cable op's rate schedule. Cable ops may file opposition within 5 days of <u>filing</u> of such petition.	1) § 76.945 does not impose specific pleading obligations. Part 1 rules require that petitions set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions on which request is based, and the interest of the person submitting the request. 2) Petitions must be served on the cable op and LFA. A certificate that service was made	1) Cable ops trying to justify the reasonableness of rates above a permitted tier rate must submit a cost-of-service showing. 2) Cable ops must justify their rates under § 76.922 & § 76.923. 3) A petitioner challenging the rates would try and show that the cable op's calculations are wrong or that the costs are inflated.	Burden of proof is on the cable op -- must show that rates are reasonable.	

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			4) Petitions challenging rates outside of the § 76.922 & § 76.923 standards must be filed within 30 days of the <u>public notice</u> of the rate schedule. Cable ops can file an opposition within 10 days of the <u>filing</u> of such petition.	must accompany the petition. 3) Any oppositions or replies that are filed must be served on the respective opposing parties and the LFA. A certificate of service must be filed.			
§§ 76.950-.956, 76.1402 <b>Rate Complaints</b>	Allows an LFA to file a complaint about the rates a cable op is charging for cable programming service.	1) Complaint must be filed within 180 days of the effective date of the rate increase, <u>see</u> § 76.1402. 2) Complaint may only be filed if more than one subscriber complaint was received by LFA within 90 days of rate increase.	1) More than one subscriber complaint must be received by the LFA. 2) LFA must give cable op written notice of intent to file complaint. 3) LFA must give cable op minimum of 30 days to file with LFA rate justification forms or certification that cable op is not subject to rate regulation. 4) Cable op must file complete response within the time period. 5) LFA files complaint which must include cable op's response. 6) FCC conducts an	1) Must use standard complaint form and include: a) Name, mailing address, & phone # of LFA; b) Name, mailing address, & FCC community unit identifier of relevant cable op; c) Description of programming service or equipment involved and how service has changed; d) Current rate for the service and prior rate if challenging rate increase; e) Indication that LFA received more than one subscriber	1) Complaint must meet a minimum showing. The minimum showing is met if the complaint is filed using the standard complaint form described in § 76.951 and includes all information and attachments required by that form. Complaints not meeting this showing are dismissed without prejudice to filing a corrected form under § 76.955. Cable op can file a motion to dismiss for failure to meet the minimum showing. Motion must state with particularity the reasons complaint is	Burden of proof is on the cable op to prove that rates are reasonable.	1) These regulations sunset on March 31, 1999. 2) The filing of a motion to dismiss a complaint because it is defective does not relieve the cable op from responding to the complaint. 3) Complainant has only one opportunity to correct a defective complaint. 4) Failure to respond to a complaint may result in default order against cable op. 5) Cable op need not respond if complaint is filed on wrong form or if FCC dismisses the complaint <u>and</u> notifies the cable op. 6) If a complaint is filed

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			initial review to see if complaint meets initial showing requirement; if not, it dismisses petition with leave to file a corrected complaint under § 76.955. 7) Cable op must file a response to the complaint within 30 days of the <u>date of service</u> of the complaint. 8) For multiple complaints re: identical rate or rate increase, the cable op may file a consolidated response. 9) A consolidated response must be filed within 30 days from the date of service of the <u>first</u> complaint.	complaint within 90 days of rate change; and f) Certification of truthfulness. 2) Complaint must be served on cable op via <u>certified mail</u> . 3) Response must include information required by the FCC form. 4) Response must be served on complainant via <u>first class mail</u> .	defective. 2) Complainant is not required to provide underlying information and calculations to show that rates are unreasonable. 3) The cable op must show that: a) service rate is at or below permitted level; b) if above permitted level, cable op has reduced it to permitted level or that it is justified by detailed cost-of-service showing; or c) if a change in equipment installation or rental rates, it is based on cable op's actual costs.		on the correct form but is defective, then complainant must cure the defect within 30 days. 7) This defect tolls the period in § 76.953.
<b>§ 76.975 Leased Access Dispute Resolution</b>	Any person aggrieved by a cable op's failure to make available commercial channel capacity or to charge	1) Petitions not based on rates must be filed within 60 days of alleged violation. 2) Petitions based on rates must be filed within 60 days of the final	<u>Petitions based on rates:</u> 1) Parties must first obtain an independent accountant's assessment of the reasonableness of the cable op's rates. See "Special Require-	1) Petition must contain statement of facts, specific statutes or rules violated, and certification that petition was served on cable op. 2) If petition is based on rates and	1) If petition is based on rates, then must attach the independent accountant's report. 2) There is a rebuttable presumption that the	Petitioner must show by <u>clear and convincing evidence</u> that the cable op has violated the rules.	1) The selection of an independent accountant is left up to the parties. § 76.975(b)(2), however, imposes certain selection procedures on the parties. 2) The final report must be completed within 60

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	reasonable rates may file a petition for relief.	accountant's report or within 60 days of the termination of Alternative Dispute Resolution ("ADR"). See "Special Requirements/Other Comments" column.	ments/Other Comments" column. 2) Petitioner files. 3) Cable op has 30 days from filing of the petition to respond. 4) There is no opportunity to reply to the response. 5) If staff finds a <u>prima facie</u> violation, it may order additional information or specify special proceedings.  <u>Petitions not based on rates:</u> Numbers 2-4 above. No independent accountant's report is needed.	is being filed over 60 days past the issuance of the report, then the parties must certify that the petition is being filed within 60 days of the end of ADR--cable op can rebut certification. 4) There is no requirement in the rule that the response be served on the petitioner.	independent accountant's report is correct. 3) If the rate is disputed, then the cable op's response must show the rate is not higher than the maximum permitted rate and be supported by an affidavit of a company official.		days of the selection of the accountant. 3) The final report must state the maximum permitted rate and state how it was determined. 4) The report must be signed, dated, certified, and filed in the cable system's local public file.
<b>§ 76.1002 Petition for Exclusivity</b>	Allows cable ops and vertically integrated satellite programmers to obtain FCC approval to enforce or enter into an exclusive contract in a certain area.	Petitions may be filed at anytime.	1) Petitioner files. 2) Any competing MVPD affected by proposed exclusivity can file an opposition within 30 days of the date on which the petition is placed on <u>public notice</u> . 3) Petitioner may file a response within 10 days of <u>receipt</u> of a formal opposition.	1) Petition should include: a) description of the programming service; b) extent and duration of the exclusivity proposed; and c) other terms related to exclusivity or to criteria in		Cable op must prove that contract is in the public interest.	1) Rules sunset on 10/05/02 unless FCC, pursuant to proceeding, determines that exclusivity prohibition needs to be continued. 2) In evaluating a petition for exclusivity, the FCC looks at several factors with respect to the effect of an exclusive contract on distribution of video programming

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				§ 76.1002(c)(4). 2) Oppositions must state the reasons why the exclusive contract is not in the public interest. See <u>id.</u> 3) Oppositions must be served on petitioner the same day that it is filed with the FCC.			in an area. The factors are: a) the effect on the development of competition in the local & national video distribution market; b) the effect on competition from MVPDs other than cable; c) the effect on attraction of capital in the production of new satellite cable programming; d) the effect on diversity of programming; and e) the duration of the contract.
§ 76.1003 Adjudicatory Proceedings for Program Access	Allows an MVPD to challenge a vertically integrated satellite programmer's conduct in marketing and granting access to its programming.	Complaints must be filed within one year of the date of: a) programmer's signing a contract w/ the complainant that is alleged to violate a rule; b) programmer's offering of service to complainant on terms alleged to violate a rule; c) complainant notifying programmer of	1) MVPD provides notice to programmer that MVPD intends to file a complaint. 2) After providing a minimum of <u>10 days</u> for the programmer to respond, the MVPD files a complaint. 3) Programmer has 30 days after <u>being served</u> with the complaint to file an answer.	<u>Complaint Requirements:</u> 1) § 76.1003(b) lists 7 general pleading requirements that pertain to clarity, support for legal and factual assertions, and parties' duties regarding the record. 2) § 76.1003(c)(1) lists 13 specific pleading requirements for program access complaints	<u>Complaint Requirements:</u> 1) Complaint must provide evidence that defendant meets the attribution standards, and evidence that defendant cable op or its customer competes w/ complainant. 2) In discrimination complaints, must submit evidence that demonstrates a differential in price between complainant and other MVPDs. 3) In exclusivity complaints, must list	Complainant has initial burden to make a <u>prima facie</u> case. Then, burden shifts to defendant who has responsibility to plead and prove affirmative defenses.	1) FCC may require parties to file briefs or any additional information it deems appropriate. 2) Failure to file and serve an answer within the time prescribed may result in default and an order entered against the defendant. 3) FCC can order discovery including interrogatories and document production. 4) FCC can order status conference.

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		intent to file based on a request to purchase or negotiate service, or a request to amend an existing contract, that has been denied or not acknowledged.	4) Complainant may file a reply to the answer within 20 days of being served with the answer.	including a complete statement of facts that would constitute a violation. 3) The complaint must be served on all defendants.	identity of parties to exclusivity contract, evidence that complainant can or does serve the area specified in the complaint, and evidence that the complainant has requested to purchase the programming and has been refused or unanswered. 4) In complaints alleging a general unfair practice must provide evidence demonstrating that the behavior complained of has harmed complainant. 5) Must provide evidence that the required notification prior to filing a complaint was made. 6) Complaints must be accompanied by a sworn affidavit, signed by an authorized officer or agent of the complainant, attesting to the belief that complaint is meritorious.		

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				<u>Answer/Reply Requirements:</u> 1) Must advise parties and the FCC fully and completely of all defenses, and shall respond specifically to all material allegations of the complaint; 2) Must admit or deny each averment in the complaint; 3) Must state or provide specific evidence to refute charges of discrimination, exclusivity, or unreasonable refusal to sell. 4) Replies shall be responsive to matters contained in the answer and shall not contain new matters; and 5) Answers and replies must be served on the respective parties.	<u>Answer Requirements:</u> 1) In an exclusivity complaint, the answer must give a legitimate reason for refusing to sell programming to complainant. Also must submit its programming contracts covering the area specified in the complaint. 2) In a discrimination complaint, the answer must state the reasons for any difference in prices, terms, or conditions between complainant and its competitor. In addition, answer must include defendant's justification under § 76.1002(b) in support of the difference. Further, the answer must provide specific evidence justifying the magnitude of the difference if greater than \$.05 or 5%. 3) In an answer to a complaint alleging an unreasonable refusal to sell, the		

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					defendant must state its reason for refusing to sell or refusing to sell on the same terms and conditions, and must specify why the defendant's actions are not discriminatory.		
§ 76.1302 Adjudicatory Proceedings for Carriage Agreements	Allows an MVPD or programmer to challenge an MVPD's conduct that violates § 76.1301-- a) requiring a financial interest in a programmer before carriage is granted; b) requiring a programmer to engage in exclusive contract as a condition of carriage; and c) discriminating in video distribution on the basis of	Complaints must be filed within one year of the date of: a) MVPD defendant signing a contract w/ a programmer that is alleged to violate a rule; b) MVPD offering of carriage pursuant to terms alleged to violate a rule; or c) complainant notifying MVPD of intent to file based on a violation of the carriage rules.	1) MVPD or programmer provides notice to MVPD that it intends to file a complaint. 2) After providing a minimum of 10 days for the MVPD to respond, the MVPD or programmer files a complaint. 3) MVPD has 30 days from <u>service</u> of the complaint to file an answer. 4) Complainant may file a reply to the answer within 20 days of being served with the answer.	<u>Complaint Requirements:</u> 1) § 76.1302(b) lists 7 general pleading requirements that pertain to clarity, support for legal and factual assertions, and parties' duties regarding the record. 2) § 76.1302(c)(1) lists 9 specific pleading requirements for carriage agreement complaints including: a) name of complainant & defendant; and b) citation to the statute and/or rules alleged to have been violated.	1) Complainant must provide evidence that defendant meets the attribution standards. 2) In discrimination complaints, must submit evidence that demonstrates that the discriminatory conduct was engaged in to restrain the ability of the complainant to compete fairly. 3) Complaint must be accompanied by evidence demonstrating that the required notification prior to filing a complaint was made. 4) Complaints must be accompanied by a sworn affidavit, signed by an officer or agent of the complainant,	Complainant has initial burden to make <u>prima facie</u> case. Then, burden shifts to defendant who has responsibility to plead and prove affirmative defenses.	1) FCC may require parties to file briefs or any additional information it deems appropriate. 2) Failure to file and serve an answer within the time prescribed may result in default and an order entered against the defendant. 3) No motions practice except in extraordinary circumstances. 4) FCC can order discovery including interrogatories and document production. 5) FCC can order status conference.

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	affiliation or nonaffiliation in the selection, terms, or conditions for carriage.			<p>3) The Complaint must be served on all defendants pursuant to § 76.1302(l).</p> <p><u>Answer/Reply Requirements:</u></p> <p>1) Must advise parties and the FCC of all defenses, and shall respond specifically to all material allegations of the complaint.</p> <p>2) Must admit or deny each averment in the complaint.</p> <p>3) Must address relief requested, including legal and documentary support for such response, and may include alternative relief proposal.</p> <p>4) Replies shall be responsive to matters contained in the answer and shall not contain new matters.</p> <p>5) Answers and replies must be served on the respective parties pursuant to § 76.1302(l).</p>	meritorious complaint. Answers must include any evidence necessary to support an affirmative defense.		

## EXHIBIT B

## EXISTING CABLE PUBLIC NOTICE FORMAT

REPORT NO. 1185

MAY 29, 1998

CSR Number	Petitioner	Special Relief Requests Communities	Code
CSR- 5245-M	DP MEDIA OF MARTINSBURG, INC. (WWPX )	Clay Township & Three Springs, PA	No Code
CSR- 5246-M	DP MEDIA OF MARTINSBURG, INC. (WWPX )	Butler and Cumberland Townships, PA	No Code
CSR- 5247-L	JOHN P. RUDITIS ( )	St. Johns County, FL	No Code

## TCI'S PROPOSED REVISIONS TO CABLE PUBLIC NOTICE FORMAT

CSR Number	Type of Complaint/Petition	Complainant(s)/ Petitioner(s)	Respondent(s)/ Affected Cable Operator(s)	Affected Community(ies)	Code (Such as CUID #)	Oppositions/ Responses Due
CSR-4199-M	Must Carry	MustCarry, Inc.	Cable Operator A, Inc.	Pittsburgh, PA	PA0001	6/22/98
CSR-5100-L	Leased Access	LeasedAccess, Inc.	Cable Operator B, Inc.	Dallas, TX	TX0002	6/22/98

## EXHIBIT C

x. Section 76.944 is amended by adding a new paragraph (d) to read as follows:

Sec. 76.944 Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

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(d) Status conference.

(1) In any appeal, or potential appeal, of a franchising authority's local rate decision, the Commission staff may in its discretion direct the parties and/or their attorneys to appear for a conference to consider:

(i) Simplification or narrowing of the issues;

(ii) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(iii) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(iv) Settlement of the matters in controversy by agreement of the parties;

(v) The date for any further conferences; and

(vi) Such other matters that may aid in the disposition of the rate appeal.

(2) Any party may request that a conference be held at any time after the rate appeal has been filed, or within 30 days after the local franchising authority has issued a written rate order.

(3) Conferences will be scheduled by Commission staff at such time and place as it may designate, to be conducted in person or by telephone conference call.

(4) The failure of any party or attorney, following reasonable notice, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission staff from conferring with those parties or counsel present.

(5) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a local rate appeal proceeding including, inter alia, procedural matters; the submission of other evidentiary materials; and the bifurcation, settlement, or withdrawal of particular issues raised, or to be raised, in the appeal. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the Commission staff.